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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 396

LEWIS E. DENNY, JR., AND VERA ANN DENNY,
PETITIONERS,

VS.

THE AUTOMOBILE INSURANCE COMPANY OF
HARTFORD, CONNECTICUT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PAUL BARNETT,
DAVID SKEER,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Lewis E. Denny, Jr., and Vera Ann Denny respectfully shows to this Honorable Court:

A.

SUMMARY AND STATEMENT OF THE MATTER INVOLVED.

Petitioners were plaintiffs in the District Court trial of this cause; they brought suit on an insurance policy

known as a personal property floater purporting to insure all of their personal property save that which was required to be scheduled. While said policy was in effect, plaintiffs' home was burglarized and unset diamonds appraised to have a value of $11,020 were stolen from a vault in the residence. Defendant insurance company denied liability therefor, claiming that said unset diamonds were "jewelry" and as such were not covered by the policy unless specifically scheduled therein. Plaintiffs' contention was and is that unset diamonds are not "jewelry"; but if they be so construed, they are nonetheless covered by the policy, because it is only "personal" jewelry that is required to be scheduled in the policy in order to be covered, and unset diamonds are not "personal jewelry."

B.

JURISDICTION TO REVIEW JUDGMENT.

1. Jurisdiction is claimed by reason of the provision of Title 28, U. S. C. A., Section 1254 (1), providing for a review by the Supreme Court of cases in the courts of appeals by Writ of Certiorari upon petition of any party to any civil case after rendition of judgment therein; Title 28, U. S. C. A., Section 2101 (c), providing for any Writ of Certiorari intended to bring any judgment in a civil action before the Supreme Court for review within ninety days after the entry of such judgment; and Rule 38, Paragraph 5 (b), of the Supreme Court Rules, Title 28, U. S. C. A., Rules of the Supreme Court, page 68, setting forth the character of reason which will be considered in granting a Writ of Certiorari.

2. The date of the judgment to be reviewed is September 2, 1953 (R. 125), petition for rehearing was filed August 11, 1953 (R. 113), and was denied on September 2, 1953 (R. 125).

C.

QUESTIONS PRESENTED.

1. Whether words may be deleted from an insurance policy provision, so that the same may be construed to have a meaning inconsistent with the words so deleted.

2. Whether the definition of the word "jewelry," established by another United States Court of Appeals, established by the Congress of the United States in enacting tariff laws, and established by dictionary definitions, should be ignored in construing a contract of insurance, and a novel, original meaning attributed thereto.

3. Whether the United States Court of Appeals for the Eighth Circuit erred in basing its decision, in construing an insurance policy, on the conduct of an insurance broker; whereas the law of the State of Missouri, where the contract was made, is that a broker is the agent of the insured only, and therefore such broker's conduct could not in any way bind the insurer to any interpretation of said policy, and thus whether such reliance by the United States Court of Appeals for the Eighth Circuit renders its judgment in conflict with decisions of the Supreme Court of Missouri, and thereby renders said decision in conflict with decisions of the Supreme Court of the United States, holding that the law of the State of Missouri should control.

4. Whether the United States Court of Appeals for the Eighth Circuit, in deleting an essential word from an insurance policy provision, in defining a material word in said policy provision contrary to definitions as previously adjudicated by other courts, including another United States Court of Appeals, and contrary to a definition established by the Congress of the United States in its tariff

laws, in relying on a law of agency in conflict with the decisions of the Supreme Court of Missouri, in which state the contract and agency relationships were entered into, has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of the power of supervision of the Supreme Court of the United States.

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

Petitioners rely on the following reasons in requesting the allowance of a Writ of Certiorari in this case:

1. The United States Court of Appeals for the Eighth Circuit deleted the word "personal" from an insurance policy provision pertaining to the loss on which this suit was based. Decisions of other circuit courts of appeals and of the Supreme Court of the United States conflict with the holding in this cause, in that they provide that an insurance policy should be construed as a whole, without deletion of any part thereof, and all words and provisions should be read together rendering none of the terms meaningless.

2. The United States Court of Appeals for the Eighth Circuit in its opinion in this cause refused to follow every other decision ever rendered in which the word "jewelry" is defined, and gave what it called a "broad sense" meaning to the word, which meaning is in conflict with the decision of another circuit court of appeals and all other judicial decisions on the question.

3. The Congress of the United States enacted tariff laws applicable to "jewelry" and other tariff laws ap-

plicable to unset stones, assessing a far lower rate of tax against the latter, thereby recognizing a clear cut distinction between the two items. The United States Court of Appeals for the Eighth Circuit in this cause holds that there is no distinction between the two.

4. The effect of the decision of the United States Court of Appeals for the Eighth Circuit in this cause is that only that property owned by the insured at the time the policy was purchased is covered; whereas, it is common knowledge among laymen, insurance companies and courts alike, as well as being clear from the policy provisions themselves, that after-acquired property, in fact any property, whenever acquired, owned by the insured at the time of loss, is covered by such a policy of insurance as the one in suit.

5. The United States Court of Appeals for the Eighth Circuit relied for its decision in this cause on the action of an insurance broker. In this respect, the court's decision is in conflict with the law of the State of Missouri holding that an insurance broker is the agent of the insured, in which event in this cause, any action or word of the broker would have been the action and word of plaintiffs-appellees and would in no way affect the meaning of the policy in suit. By relying on an interpretation in conflict with the law of the State of Missouri, as declared by the Supreme Court of that State, the decision of the United States Court of Appeals for the Eighth Circuit is in conflict with controlling decisions of the Supreme Court of the United States.

6. The decision of the United States Court of Appeals for the Eighth Circuit holds that the word "jewelry" has but one meaning, and that such meaning is unambiguous in the sense that it must include unset stones. By this

holding, the court has avoided the rule of resolving an ambiguity in favor of the insured. In view of the fact that every other court decision, as well as the Congress of the United States, has recognized a difference between "jewelry" and unset stones, petitioners urge that as a matter of law, the least that can be said for the contention that the word "jewelry" does not apply to unset stones, is that the word is ambiguous. If so, then that ambiguity should be resolved in favor of plaintiffs-appellees. The United States Court of Appeals for the Eighth Circuit, by its decision, negates the effect of the holdings of the Supreme Court of the United States and other circuit courts of appeals, and thereby is in conflict with such holdings.

7. Since defendant insurance company, as well as numerous other insurance companies, has issued thousands of policies containing the same or similar language (as in the policy in suit) to insureds all over the country, and since the United States Court of Appeals for the Eighth Circuit has interpreted such a policy in a way inconsistent with dictionary definitions, court decisions and Congressional statutes as to the meanings of the words contained in said policy, the rights of people all over the nation are affected by this decision. Holding that the meaning given to a word in tariff cases, interstate commerce cases, property tax cases, innkeeper cases, will cases, Federal statutes, and dictionaries, does not apply when that word is used in an insurance policy, threatens the security of holders of insurance policies universally. Such a holding undermines the entire economy of the nation, because the business of the country relies heavily on insurance. Also individuals rely heavily on insurance protection. If the decision of the United States Court of Appeals for the Eighth Circuit is allowed to stand, all such reliance on insurance protection is rendered dependent upon new and peculiar mean-

ings of words, different from the meanings set forth in dictionaries, different from the meanings adjudicated by the courts, different from the meanings decided upon in Federal statutes; in short, meanings adversely unique in the realm of insurance. These unique meanings are not anticipated by insurer or insured, either at the time the premiums are assessed or at the time losses are sustained. Such a holding changes the nature of the contract from one of insurance to one of speculation. Petitioners urge that such a holding destroys the stability of the institution of insurance and all of the business and personal life dependent thereon.

8. The United States Court of Appeals for the Eighth Circuit, in deleting a word from an insurance policy provision, in discounting dictionary definitions, court decisions and Federal statutes, in prescribing one fixed definition for a word contrary to such definitions, adjudications and statutes, in relying on an effect of a broker's action and thereby being in conflict with the law of the State of Missouri, has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise and power of supervision of the Supreme Court of the United States.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals, Eighth Circuit, commanding that court to certify and send to this court for its review and determination on a day certain to be therein named, a full and complete description of the record and all proceedings of the case numbered and titled on its docket 14766, The Automobile Insurance Company of Hartford, Connecticut, Appellant, vs. Lewis E. Denny, Jr., and Vera Ann Denny,

Appellees, and that the said judgment of the United States Court of Appeals for the Eighth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioners will forever pray.

PAUL BARNETT,

_____,

DAVID SKEER,

_____,

Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the District Court of the United States for the Western District of Missouri, Western Division, is reported in 106 Fed. Supp. 111. The opinion of the United States Court of Appeals for the Eighth Circuit, not yet reported, was dated July 30, 1953 (R. 105).

II.

JURISDICTION.

The jurisdiction of the District Court of the United States was originally invoked by reason of the diversity of citizenship existing between plaintiffs and defendant. Plaintiffs were citizens and residents of Kansas City, Missouri. Defendant was a corporation organized under the laws of the State of Connecticut, with its chief place of business located in Hartford, Connecticut. The amount sued for was in excess of $3,000.00 (R. 1, 2, 3).

Tit. 28, U. S. C. A., Sec. 1332 (a) (1).

The District Court rendered judgment for plaintiffs on July 8, 1952 (R. 14). Defendant appealed to the United States Court of Appeals, for the Eighth Circuit, which court reversed the judgment of the trial court and rendered judgment for defendant on July 30, 1953 (R. 112). Plaintiffs' petition for rehearing was filed on August 11, 1953 (R. 113). Said petition was denied on September 2, 1953

(R. 125), which would constitute the date of judgment in the United States Court of Appeals for the Eighth Circuit.

Dept. of Banking, State of Nebr., v. *Pink*, 317 U. S. 264, 63 S. Ct. 233.

Aspen Mining & Smelting Co. v. *Billings*, 150 U. S. 31, 14 S. Ct. 4.

Issuance of mandate was stayed for a period of 30 days by order of the United States Court of Appeals for the Eighth Circuit, made on September 15, 1953 (R. 125).

Jurisdiction of the Supreme Court of the United States to review the judgment of the United States Court of Appeals for the Eighth Circuit is claimed because the petition for Writ of Certiorari is brought at the instance of a petitioner to a civil case after judgment by a United States Court of Appeals.

Tit. 28, U. S. C. A., Sec. 1254 (1).

Further, jurisdiction is claimed for the reason that the filing of a petition for a Writ of Certiorari was accomplished within the 90-day period allowed therefor.

Tit. 28, U. S. C. A., Sec. 2101 (c).

III.

STATEMENT OF THE CASE.

On June 11, 1949, petitioners in this court, hereinafter called plaintiffs, purchased from defendant insurance company a personal property floater insurance policy No. IMF 104445 (R. 18). In September or early October, 1950, while said policy was in full force and effect, plaintiffs had a certain diamond bracelet dismantled, and the unset stones taken from said bracelet had a reasonable replacement value of $12,000 (R. 60). These diamonds, 177 of them (R. 16, 47, 58), were individually wrapped and were placed

by plaintiffs in a heavy fireproof safe in their home (R. 16, 47).

Thereafter one of the diamonds was sold for $980, leaving 176 unset diamonds, separately wrapped, having a value of $11,020 (R. 16, 47, 58, 60). These 176 diamonds were stolen from plaintiffs' home on November 7, 1951 (R. 16, 47). At that time said insurance policy was in full force and effect, and the pertinent provisions thereof are as follows:

> "Amounts of Insurance * * * 3. Insurance attaches only with respect to those items in this paragraph for which an amount is shown and only for such amount * * *
>
> "Item (a) $15,000.00 on unscheduled personal property, except as hereinafter provided * * *
>
> "Item (b) $10,174.50 on personal jewelry * * * as per schedules attached hereto. Each item considered separately insured.
>
> "Item (c) $ Nil on unscheduled personal jewelry * * * In addition to the amount of $250.00 provided in paragraph 5 (b), against fire and lightning only * * *" (R. 18, 39, 45).
>
> "Limitations * * * 5 (b) As respects any one loss of unscheduled jewelry * * * the company shall not be liable for more than $250.00, unless the loss is covered under Item (c), paragraph 3, in which event the company's liability for such loss is limited to the amount stated therein * * *" (R. 18, 23).

Plaintiffs' insurance broker had a conversation with Mr. Denny, one of the plaintiffs, after the diamonds had been removed from the bracelet in regard to whether or not additional money should be expended for insurance on the diamonds. Mr. Browne explained that at that time he

had no particular procedure in mind as to whether $15,000 coverage on unscheduled personal property would have been increased, whether the diamonds would have been scheduled, or whether a separate policy would have been purchased (R. 85). Nothing was done as a result of that conversation. Plaintiffs entrusted all of their insurance problems to the said Mr. Browne, and it was plaintiffs' understanding that all of their property would be properly insured (R. 47, 49). Plaintiffs brought suit upon the theory that the unset diamonds were not "personal jewelry."

IV.

SPECIFICATION OF ERRORS.

1. The United States Court of Appeals for the Eighth Circuit erred in deleting the word "personal" from the words "personal jewelry" in construing the policy in suit, and thereby is in conflict with other United States Courts of Appeals and with the United States Supreme Court.

2. The United States Court of Appeals for the Eighth Circuit erred in finding and holding that the word "jewelry" included dismounted diamonds, contrary to decisions of other United States Courts of Appeals, in conflict with Federal statutes, and in conflict with dictionary definitions.

3. The United States Court of Appeals for the Eighth Circuit erred in finding and holding that a misunderstanding between plaintiffs and their insurance broker resulted in failure to schedule or expressly cover the unset diamonds, such finding being in conflict with court decisions of the State of Missouri, and thus of the Supreme Court of the United States.

V.

ARGUMENT.

Summary of the Argument.

POINT A.

The Decision of the Court Below Is Contrary to and in Conflict with Prior Federal and State Court Decisions.

1. A contract, such as the policy of insurance here in suit, must be construed as a whole and a construction adopted which will render none of its terms meaningless.

U. S. v. *Hillcrest Inv. Co.*, 147 F. 2d 194.

Gutensohn v. *K. C. Sou. Ry. Co.*, 140 F. 2d 950.

Nicholson Pavement Co. v. *Jenkins*, 81 U. S. 452, 14 Wall. 452, 20 L. Ed. 777.

To delete a word from a contract not only renders that word meaningless, but may change the entire effect of the contract. In the instant case it will be noted that in the opinion of the United States Court of Appeals for the Eighth Circuit, the pertinent provisions of the insurance policy are quoted. In those quoted portions under paragraph 3, "Amounts of Insurance," Item (b) provides for the scheduling of "personal jewelry." Item (c) provides for the insuring of "unscheduled personal jewelry." All other personal property owned, used or worn by the assured is covered under Item (a), of paragraph 3 (the other specific types of property required to be scheduled are not mentioned in this brief for the reason they are not pertinent to the issues) (R. 18, 23). Paragraph 5 (b), under "Limitations" sets a limit on unscheduled jewelry at $250.00, "unless the loss is covered under Item (c), paragraph 3." Item (c) is an insuring provision for "un-

scheduled personal jewelry," so the limitation in paragraph 5 (b) must be a limitation on "unscheduled personal jewelry." Therefore it is clear that under the terms of the policy in suit, to obtain coverage on "personal" jewelry, the same must be scheduled under Item (b) or insured as unscheduled under Item (c). *There is no place in this policy to insure jewelry, other than "personal" jewelry, except under Item (a), in paragraph 3.*

The court below nowhere in its opinion, except in the quotation from the policy, mentions the words "personal jewelry" (R. 105 to 112). It discusses "jewelry" as though provided for under Item (b) and Item (c), although those provisions for coverage apply only to "personal" jewelry. The court's error is graphically exposed when it asks in the last major paragraph of its opinion this question: "If the coverage under the policy had been $250.00 on 'unscheduled personal property' and $15,000.00 on 'unscheduled jewelry' can anyone believe that the plaintiffs would have asserted that the diamonds were not 'jewelry' * * *" (R. 112).

For the court to have hypothesized $15,000 coverage on "unscheduled jewelry" shows the error of its opinion. *There is no place in the policy in suit to insure "unscheduled jewelry."*

In construing the policy without referring to the important word "personal," the court has lost sight of the rule against deletion of words from contracts. Its judgment therefore is in conflict not only with its own prior decisions, but with the decisions of other courts of appeals, and of the Supreme Court of the United States as well.

Nicholson Pavement Co. v. *Jenkins, Supra.*

Furthermore, this deletion is not a mere technical nicety. Personal jewelry is jewelry that is worn upon the

person, or is intended to be so worn. Thus there is a very great insurance risk attached to personal jewelry. A necklace clasp gives way and the necklace slips off and is lost—a bracelet or a ring is removed from the hand or wrist in a lavatory, and the owner absentmindedly leaves it there—a pin or clasp, worn on the dress, is brushed off by a passer-by, or while dancing, without detection. Personal jewelry is displayed to the public and serves as a lure or enticement for thieves and robbers. Plaintiffs contend not only that unset diamonds are not "personal jewelry," but that they are not jewelry of any kind. But assuming for the moment that they are jewelry that can not be and is not worn on the person, then it is clear that the risk is completely different. They are items of a type which would be kept under lock and key in a safe or vault as in the instant case (R. 16, 47). Though they are of great value, they are the one item most carefully protected from careless loss or theft.

Consequently the deletion of the word "personal" from consideration in construing the policy in suit results in the requirement that items subject to totally different risks be insured at the same premium rate. It is to avoid this kind of unequal treatment between various contracting parties that the rule has been adopted for construing and giving meaning to all of the terms of a contract as a whole.

2. The decision of the court below is contrary to and in conflict with prior federal and state court decisions in that the decision adopts a new, novel, original concept of the meaning of the word "jewelry." Every other court decision which we have been able to uncover in which the word "jewelry" is defined adheres to one consistent pattern.

Citroen v. *U. S.*, 166 Fed. 693.

U. S. v. *Tiffany Co.*, 172 Fed. 300, affirmed 178 Fed. 1006.

W. M. Fine & Bros. v. *Sou. Exp. Co.*, 10 Ga. App. 161, 73 S. E. 35.

Commonwealth v. *Glover*, 132 Ky. 588, 116 S. W. 769.

Rains v. *Maxwell House Co.*, 112 Tenn. 219, 64 L. R. A. 470, 79 S. W. 114.

Robbins v. *Robertson*, 33 Fed. 709.

Ramaley v. *Leland*, 43 N. Y. 541.

Cavendish v. *Cavendish*, 1 Brown's Chancery Rep. 467.

Title 19, U. S. C. A., Sec. 100, pars. 1527, 1528.

Words and Phrases, Vol. 23, Jewels and Jewelry.

Webster's Unabridged Dictionary, 1950 Ed., pages 1335, 1042.

The Circuit Court of Appeals for the Second Circuit in *Citroen* v. *U. S.*, *supra.*, had to decide whether or not loose pearls drilled with holes for stringing in a necklace, and which had formerly been strung as a necklace, constituted jewelry when they were imported into the United States. In referring to the Tariff Act, assessing different tariff rates on strung pearls as distinguished from jewelry the court states:

> "It would appear that the intent (of Congress) was to provide for all pearls in the two paragraphs, 434 covering *pearls which had become jewelry by being set or strung in pins, rings, necklaces, etc.*, and 436 *covering all other pearls*" (Emphasis ours).

The word jewelry is clearly defined in *Robbins* v. *Robertson, supra,* on page 710:

> "What is jewelry? The word 'jewelry' is generally used as including articles of personal adornment * * * that articles of value used for personal adornment in our civilization are, and for centuries

have been, the precious metals—gold and silver to which I think, platina is now generally added—and what are known as precious stones, the diamond, sapphire, ruby, etc. *Articles manufactured from those for the purpose of personal adornment are known, as the witnesses on the stand told you, as articles of jewelry, and such testimony is accordant with your own knowledge as to what is the ordinary use of the term 'jewelry'* " (Emphasis ours).

So as not to extend this brief, we wish to point out that additional cases adopting the definition of jewelry mentioned above are set forth in Appellees' brief filed in the court below, pages 16 to 22. No case anywhere defines "jewelry" to include unset stones.

In the case of *Citroen* v. *U. S., supra,* mention is made of the tariff statutes. We call to the court's attention the fact that the Congress of the United States recognizes the distinction between jewelry and precious stones. The distinction is not slight, in that the tax on jewelry is 50% *ad valorem,* whereas the tax on stones is 10% *ad valorem.*

Title 19, U. S. C. A., Sec. 1001, par. 1528, page 570.

The clear-cut understanding of the Congress as to the meaning of the word "jewelry" as distinguished from precious stones, is shown in the above Act, part of which is quoted herein:

"Par. 1528 * * * *Diamonds,* corals, rubies, cameos, and other precious stones and semi-precious stones, *cut but not set, and suitable for use in the manufacture of jewelry,* 10 percentum *ad valorem* * * *" (Emphasis ours).

Referring to paragraph 1527, of the same section, on page 561, we quote:

"Par. 1527 (a) * * * Jewelry, commonly or commercially so known, finished or unfinished (including parts thereof):"

In this latter paragraph the tariff is assessed at 50 percentum *ad valorem.* It refers to articles to be worn on apparel, or carried on or about or attached to the person, and metals "set with and in chief value of precious or semi-precious stones, etc. * * *"

Just as there is good reason to make the distinction for tariff purposes between jewelry and stones, and to charge a different duty for each, so there is good reason to charge a different insurance premium for jewelry as distinguished from precious stones, as explained in point I hereof.

As to dictionary definitions, we direct the court's attention first to the definition set forth in Words and Phrases, Vol. 23, under Jewels and Jewelry:

> "Jewels are valuable stones set and prepared for wear and differ from gems in that the latter are kept for curiosity only."
>
> "The word 'jewelry,' as used by a revenue agent in a statement filed by him on property belonging to a person omitted from taxation, included the rings, pins, and other ornaments worn by the tax payer, his wife, and other members of his family, etc."

In no dictionary is a precious stone given as a definition of the word "jewelry." All of the definitions in all of the dictionaries refer to jewels collectively, personal ornament, ornament for personal wear, etc.; and under synonyms, Webster's Unabridged, 1950 Edition, page 1042, shows:

> "Gem, Jewel—in modern usage, gem more frequently suggests a precious stone as cut or polished.
>
> A jewel, a stone as set and worn for adornment."

Rather than extend this brief further, we request the court to refer to Appellees' brief in the lower court, pages 11 through 16, where dictionary definitions are more fully

analyzed. Suffice it to say here that no dictionary definition supports the opinion of the court below. We submit, in view of the court decisions, Federal statutes, and the dictionary definitions, there is no doubt that the word "jewelry" excludes precious stones which cannot be worn on the person, but even if such doubt existed, it must be liberally construed in favor of plaintiffs. That is the law announced by the Supreme Court of Missouri.

Soukop v. *Employers Assur. Corp.*, 341 Mo. 614, 108 S. W. 2d 86. That rule of law announced by the Supreme Court of the State of Missouri should be followed in the instant case.

Erie R. Co. v. *Tompkins*, 304 U. S. 64, 58 S. Ct. 817.

It is true the court below does not expressly announce any rule to the contrary. However, its decision, in giving no consideration to the court decisions, Federal statutes and dictionary definitions mentioned above, and in adopting an original and novel definition for the word "jewelry" contrary to all others, nimbly avoids the rule and negates the effect thereof. The court below should not be allowed to hold that the meaning of a word is unambiguous, then give that word a new and novel meaning, and then fail to apply the rule of strict construction of a contract against the one who drew it.

Words may be susceptible to more than one meaning depending on how they are used in a contract. This is recognized in *Kopp et al.* v. *Vacuum Oil Company et al.*, (C. C. A. 5) 63 F. 2d 406. In that case the claim was made that the language "in the event oil is discovered" really meant "in the event an oil field is discovered." The court in that case held that though there was evidence that the language could be so construed, the contract was drafted by those contending for that construction. That interpretation which "operates more strongly" against the

author should be preferred. Thus the contention for the broader meaning was denied. In the instant case the words "personal jewelry" were used in the contract prepared by the defendant insurance company. The Court of Appeals seeks to extend the meaning to a broader plane so as to include precious stones. The court below, in conflict with the decision in *Kopp* v. *Vacuum Oil Co., supra,* has extended the meaning of the word "jewelry," giving it a "broad sense" meaning (R. 111), and thus, has construed the contract contrary to law.

This court has announced the true principle in *Grace* v. *Amer. Cent. Ins. Co. of St. Louis,* 109 U. S. 278, 3 S. Ct. 207, 27 L. Ed. 932, in construing the words of an insurance policy. The court stated:

> "The words are those of the company and not of the assured. If their meaning be obscure, it is the fault of the company. If its purpose was to make notice to the person procuring the insurance, of the terms of the policy, equivalent to notice of the assured, *a form of expression should have been adopted which would clearly convey that idea, and thus prevent either party from being caught or misled*" (Emphasis ours).

3. The decision of the court below is contrary to and in conflict with the decisions of the Supreme Court of Missouri in that the effect of those findings is to treat an insurance broker as an agent of the insurer, instead of agent of the insured.

Knight et al. v. *Merchants & Mfrs. Ins. Co. of N. Y.*, 239 Mo. App. 107, 188 S. W. 2d 77.

Pringle v. *Aetna Life Ins. Co.*, 123 Mo. App. 710, 101 S. W. 130.

Gilbert v. *Malan*, 231 Mo. App. 469, 100 S. W. 2d 606.

Park v. *Fidelity & Casualty Co. of N. Y.*, 279 S. W. 2d 246, Certiorari Quashed *State ex rel. Park* v. *Daues*, 316 Mo. 346, 289 S. W. 957.

The court below in its opinion states that:

> "It is apparent that the dismounted diamonds were not scheduled in the policy or expressly covered by it due to a misunderstanding between the assureds and the assureds' broker * * *" (R. 109).

First, this basis of the court's decision is contrary to the evidence. The insurance broker stated that, had he proceeded to make any change of insurance because of the diamonds, he either would have added to the general coverage of $15,000, or he might have scheduled the diamonds, or he might have purchased a separate policy. If the question were "popped to me real quick," he would have merely added to the general coverage without scheduling (R. 58). However, that is immaterial. On pages 26 through 36, of Appellees' brief filed with the court below, the effect of the broker's conversation and conduct is fully analyzed. Under the law of the State of Missouri, by which the court below was bound, the broker was the agent of plaintiffs, and the conversation, even if it were of some prejudice to plaintiffs, had no legal effect whatsoever.

POINT B.

The United States Court of Appeals for the Eighth Circuit Has Departed from the Accepted and Usual Course of Judicial Proceedings to Such Extent As to Require the Exercise of the Power of Supervision of the Supreme Court of the United States.

To delete an important and material word from a contract provision contrary to the principle of law against such deletions as expressed by other United States Courts of Appeals and by the Supreme Court of the United States, as mentioned in Point A, paragraph 1 hereof, though not consistent with the pattern of judicial construction of con-

tracts recognized by this court, might, standing alone, not constitute such a departure.

To be confronted with a reasonable number of cases, including two Circuit Court of Appeals decisions, which establish a definition of the word "jewelry," to be confronted with statutes enacted by the United States Congress pertaining to "jewelry," and to be confronted with dictionary definitions of the word "jewelry," all distinguishing jewelry from unset, dismounted, precious stones, as shown in Point A, paragraph 2 hereof, and to by-pass all of said authorities and adopt a broad and novel definition for the word "jewelry," might, standing alone, not constitute such a departure.

To take such novel and broad definition, and with knowledge of said other authorities, hold that the novel and broad definition is clear and unambiguous, thereby relieving itself of the obligation of applying the rule of this court of strict construction against the author of a contract, might, standing alone, not constitute such departure.

To rely on a "misunderstanding" between an assured and his broker, for its judgment, thereby ignoring the evidence on the subject, and further giving to the broker a status the Supreme Court of Missouri has denied him, as set forth in Point A, paragraph 3 hereof, might, standing alone, not constitute such departure.

But to do all of these things, and to conceal the deletion of the word by simply omitting it from the entire opinion, does constitute a radical departure from the accepted, usual course of judicial proceedings.

POINT C.

Finally, we urge the court to consider the effect of the judgment of the United States Court of Appeals for the Eighth Circuit, on parties to contracts. In using the words "personal jewelry" in a contract, should the contracting parties then have to elucidate and point out that the word "personal" was not seriously intended, and may be deleted if convenient; that the word "jewelry" does not apply to marbles, or stones, toasters, or coffee pots. Unless the meaning of words, as used in our laws, as defined by our courts, and as written in our dictionaries, may be relied upon in new contracts, each word in each contract will envelope the writers thereof in endless words of explanation and limitation. Those words of explanation and limitation will be subject to further elucidation, and so on *ad infinitum.*

The decision creates an uncertainty in the realm of contract law, and specifically insurance contracts, that is extremely dangerous. There is no form of contract known to the business world more common than an insurance policy. A radical mistake in the construction of one of its standard provisions will embroil the business world in litigation throughout the entire country. Sometimes we cannot avoid achieving dangerous results. Sometimes we have no prior guide or authority on which to rely. But to discount well established guides and authorities in order to obtain a dangerous result, destroys the confidence of the people.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power in order that the judgment herein may be made consistent with prior Federal and State court decisions, and that the insurance policy in suit be construed in accordance therewith, to such end that a writ of certiorari should be granted, and this Court should review the decision of the United States Court of Appeals for the Eighth Circuit, and finally reverse it.

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In the Supreme Court of the United States

October Term, 1953.

No. 396.

LEWIS E. DENNY, JR., and VERA ANN DENNY, *Petitioners,*

vs.

THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the District Court (R. 8-14) is reported at 106 F. Supp. 111 (W. D. Mo., 1952). The opinion of the United States Court of Appeals for the Eighth Circuit (R. 105-112) dated July 30, 1953, is reported at 206 F. 2d 401.

Jurisdiction.

The judgment of the United States Court of Appeals for the Eighth Circuit was entered for defendant on July 30, 1953 (R. 112). Petition for rehearing was filed on August 11, 1953 (R. 113-124), and was denied on September 2, 1953 (R. 125). The petition for a writ of certiorari was filed on October 9, 1953. The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28, U. S. C.

Question Presented.

Whether diamonds cease to be "jewelry" when dismounted from a bracelet and become "unscheduled personal property" within the meaning of the personal property floater policy in suit.

STATEMENT.

In 1949 petitioners purchased from respondent a personal property floater insurance policy No. IMPF 104445 (R. 18), which contained the following provisions, among others:

> "3. Insurance attaches only with respect to those items in this paragraph for which an amount is shown and only for such amount.
>
> | | |
> |---|---|
> | "Item (a) $10114.65 | On unscheduled personal property, except as hereinafter provided. |
> | "Item (b) $ 3194.50 | On personal jewelry, watches, furs, fine arts and other property as per schedules attached hereto. Each item considered separately insured. |
> | "Item (c) $ Nil | On unscheduled personal jewelry, watches and furs, in addition to the amount of $250.00 provided in paragraph 5 (b), against fire and lightning only." |
>
> * * * * * * *
>
> "5. * * * (b) As respects any one loss of unscheduled jewelry, watches and furs, the Company shall not be liable for more than $250.00 unless the loss is covered under Item (c) Paragraph 3, in which event the Company's liability for such loss is limited to the amount stated therein"; (R. 18, 23).

The policy covered only "personal property," not "property pertaining to a business, profession or occupation," with certain exceptions not here relevant (Policy, Para. 6(b); R. 18, 23).

At that time petitioner Vera Ann Denny owned a diamond bracelet which was *not* insured under this policy (R. 47-48, 50, 51, 79). In July, 1950, before this bracelet was dismantled petitioners had the amount of coverage for "unscheduled personal property" increased to $15,000 (R. 18, 39) on account of other personal property acquired by petitioners (R. 18, 39, 52) but the value of "unscheduled personal property," as declared by petitioners, never included the value of the dismounted diamonds and the premium paid did not reflect the risk of their loss (R. 18, 39, 57, 109). The declarations of the assured at that time as to "unscheduled personal property" included approximate values for personal property intended to be covered, such as silverware, linens, clothing, rugs, etc., and an estimated value of $230 on "All other personal property" (R. 18, 39). (After the loss in suit petitioners increased the coverage for unscheduled personal property from $15,000 to $25,000 (R. 57).)

In October, 1950, petitioners had the diamonds dismounted from this bracelet (R. 15, 47). Some of them were made into rings and earrings (R. 16, 47), which were added to the schedules of jewelry insured under Paragraph 3, Item (b) of the policy (R. 18, 41, 53), one was sold (R. 47) and the remaining 176 diamonds were put in a "safe box" in petitioners' home (R. 47). At that time petitioner Lewis Denny, Jr., asked his insurance broker what he should do with the loose diamonds, which he told the broker were in a "safe deposit box." The broker mistakenly concluded that the loose diamonds had been placed in a bank safety deposit vault so he answered, "Well, there is no use spending your money, for instance [insurance], on those as long as you have them in the box, but as soon as you take them out of there you should let me know." (R. 77, 79, 110). The diamonds were stolen on

November 7, 1951, while the policy was in effect (R. 2, 47).

Petitioners sued claiming that the loose diamonds upon dismounting became fully insured as "unscheduled personal property" (Policy, Para. 3(a), R. 18, 23) and ceased to be "unscheduled jewelry" (Policy, Para. 5(b), R. 18, 23). Respondent asserted that the diamonds were still "unscheduled jewelry" and that coverage was limited to $250, which had been promptly paid. The District Court gave judgment for petitioners in the amount of $11,020 (R. 14-15), but the Court of Appeals in a unanimous decision reversed and remanded with directions to dismiss the complaint (R. 105-112, 206 F. 2d 401), holding that, "Within the meaning of the policy, we think the diamonds were as much 'unscheduled jewelry' after their removal from the bracelet as they were before." (R. 110, 206 F. 2d 403).

ARGUMENT.

I.

No Conflict Is Involved.

The decision of the Court of Appeals does not conflict with any other decision, either federal or state. In fact, both the decision and the circumstances here involved are unique—no other reported case has involved the problem whether dismounted diamonds are "jewelry" within the meaning of an insurance policy. Moreover, the decision involves simply a construction of certain provisions of an insurance policy, purely a question of local not federal law. The Court of Appeals correctly held that the terms of the policy were not ambiguous and that "Since we are convinced that in the policy in suit the word 'jewelry' was used in a broad sense and included mounted and dismounted diamonds, there is no point in discussing the cases referred to by counsel, none of which requires a different conclusion." (R. 111; 206 F. 2d 401, 404).

(A) The Court of Appeals construed the policy in accordance with well-settled principles and the expressed intention of the parties.

Petitioners recognize the absence of any actual conflict of decisions and assert a supposed conflict with prior federal and state cases by contending that the court below failed to apply general canons of construction enunciated in such cases (Pet. Br. 13, 16). But the purpose of certiorari jurisdiction is to resolve actual conflicts of *decisions* among the federal courts of appeals, and *decisions* on important questions of local law in probable conflict with applicable state decisions. A mere inconsistency in dicta or in the application of general principles to dif-

ferent facts is not a conflict which merits review by this Court.[1] No conflict of decisions is here presented or even a conflict as to principles governing the construction of contracts, but only a disagreement as to the applicability of canons of construction to the peculiar facts and circumstances of this case.

The Court of Appeals quoted all the insuring provisions of the policy in its opinion, so it is obvious that the Court was fully cognizant of them and did not delete a word from the contract as petitioners claim. Item (c) of paragraph 3, which contains the phrase "personal jewelry" upon which petitioners rely, is as immaterial to the issue here involved as if it were not even printed in the policy, since *no coverage* was provided thereunder and also since Item (c) is limited to loss by fire and lightning only, and has no application to a loss by theft. See *Imperial Fire Insurance Co.* v. *Coos County*, 151 U. S. 452, 463; *Eagle & Star British Dominions Insurance Co.* v. *Schliff*, 24 F. 2d 784, 785 (2nd Cir., 1928, cert. den. 278 U. S. 605. The dismounted diamonds had never been scheduled by petitioners under Item (b) of paragraph 3 of the policy. Thus, the relevant *insuring* provisions are Item (a) of paragraph 3 providing for insurance on "unscheduled personal property, except as hereinafter provided" and paragraph 5(b) limiting coverage on "unscheduled jewelry" to $250.

Even assuming *arguendo* that Items (b) and (c) of paragraph 3 are relevant in construing the policy, it is clear that the word "personal" is used throughout the

[1] See Supreme Court Rule 38, Para. 5; *Layne & Bowler Corp.* v. *Western Well Works*, 261 U. S. 385, 393 ("It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal"); *Keller* v. *Adams-Campbell Co.*, 264 U. S. 314, 319; *Sanchez* v. *Borras*, 283 U. S. 798; *Wisconsin Electric Co.* v. *Dumore Co.*, 282 U. S. 813.

policy in contradistinction to "real" property, or to property pertaining to a business, such as jewelry kept as a part of a stock of merchandise, which is specifically excluded (Para. 6(b), R. 18, 23). The Court of Appeals properly construed the policy in accordance with the manifest intention of the parties.

Petitioners' claim that the the word "personal" can only mean "worn on the person," because of a supposedly "completely different" risk attached to personal adornments, is untenable on its face. Item (b) of paragraph 3 classifies *"fine arts* and other property" (R. 18, 23) along with "personal jewelry, watches and furs," all of which must be separately scheduled and insured, although *none* of the risks respecting jewelry which are suggested by petitioners—losses due to faulty clasps, to leaving the jewel in a lavatory absent-mindedly, to its being brushed off by a passer-by, or to the lure resulting from public display on the person—would apply to fine arts. Moreover, such items as hats, gloves, handbags and cameras which are "unscheduled personal property" (Item (a)) involve *the same risks* as are asserted to be peculiar to "personal jewelry." The record herein also belies petitioners' contention. The earrings and a ring, both insured as scheduled jewelry, were stolen from the same box in petitioners' home along with the unscheduled diamonds (R. 80, 88, 93, 109). Obviously, the greater risks attached to jewelry, watches, furs and fine arts result from their high intrinsic value in relation to their size, *not* from their being worn on the person.

(B) The court below properly construed "jewelry" as used in the policy to include dismounted diamonds, and created no conflict of decisions thereby.

Although a question of purely local law is here involved, petitioners rely on federal decisions on a federal question concerning the application of the peculiar lan-

guage of the Tariff Act of 1897, which taxed "pearls set or strung" at a rate different from "pearls in their natural state," to imports of drilled but unstrung pearls.[2] The casual references by these courts to "jewelry" are *obiter dicta* and none of the decisions even purports to define "jewelry".[3]

Moreover, as to questions controlled by state law the conflict, if any, among the circuits is not a reason for granting a writ of certiorari. *Ruhlin* v. *New York Life Insurance Co.*, 304 U. S. 202, 206 (1938). Such conflicts are simply the result of differences of opinion among the state courts as to state law. In reality petitioners are asserting that a conflict exists because certain cases construing a federal statute and thus involving a federal question may have contained language or dicta inconsistent with the present decision which involves an entirely different issue of local law—the construction of a Missouri insurance policy. It is apparent that there is no actual conflict at all.

Petitioners do not claim that the construction of the word "jewelry" in this case conflicts with the local law of Missouri and cite no Missouri cases on this point.[4] Even aside from the "permissible difference of opinion"[5] of the

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[2]Tarrif Act of July 24, 1897, 30 Stat. 192, Paragraphs 434, 436. It should be pointed out that Congress subsequently clarified paragraph 436 (now paragraph 1528 of 19 U S. C., Sec. 1001) so that it reads "Pearls and parts thereof, drilled or undrilled, but not set or strung (except temporarily) * * *"

[3]*Citroen* v. *United States*, 166 Fed. 693. *United States* v. *Tiffany & Co.*, 178 Fed. 1006, affirmed *per curiam* the judgment of the District Court without discussion and solely on the authority of the *Citroen* case. *Robbins* v. *Robertson*, 33 Fed. 709, was not a *decision* at all but merely a report of a trial court's charge to the jury. Even if it were a decision, and conflicted with the present decision, a conflict with a *trial court* is not the basis for certiorari.

[4]Petitioners in effect ask this Court to substitute its judgment for that of the Court of Appeals on a question of Missouri law which the Missouri courts have never discussed or decided. Cf. *Estate of Spiegel* v. *Comm'r*, 335 U. S. 701, 708, holding that this Court's general policy is not to disturb a decision of a Court of Appeals on questions of state law.

[5]*Ruhlin* v. *N. Y. Life Ins. Co.*, 304 U. S. 202, 206.

various state courts, none of the decisions from other states relied upon by petitioners conflicts with the present decision. Thus, dictum in a case involving loss of an express shipment,[6] cases involving statutes relating to the liability of an inkeeper for loss of other valuables and "jewelry,"[7] a case involving the sufficiency under a state tax statute of a revenue agent's description of assessed property,[8] and an English decision construing the meaning of "gems" in a will[9] are cited. In none of these cases was the term "jewelry" defined or attempted to be defined, and none involved an issue even remotely similar to the issue in the present case. The "conflicts" asserted by petitioners are illusory.

(C) No agency question was decided below.

Finally, petitioners claim that the decision below conflicts with Missouri decisions in that "the effect of those findings is to treat an insurance broker as an agent of the insurer, instead of agent of the insured." (Pet. Br. 20). However, the Court of Appeals did not even mention the doctrine of agency which it is claimed to have relied on, much less base its decision thereon. Rather, the Court simply referred to the conversations between petitioner and the broker in its statement of the factual background of the case.

The essence of petitioners' claim is simply that the Court of Appeals erred in its interpretation of the policy in suit. But certiorari is not granted merely to give another hearing to the party defeated below,[10] nor to cor-

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[6] *Wm. Fine & Bro.* v. *Southern Express Co.*, 10 Ga. App. 161, 73 S. E. 35.

[7] *Rains* v. *Maxwell House Co.*, 112 Tenn. 219, 79 S. W. 114; *Ramaley* v. *Leland*, 43 N. Y. 541. Cases to the contrary include *Wagner* v. *Congress Square Hotel Co.*, 115 Me. 190, 98 Atl. 660, 662.

[8] *Commonwealth* v. *Glover*, 132 Ky. 588, 116 S. W. 769.

[9] *Cavendish* v. *Cavendish*, 1 Brown's Chancery Rep. 467. Contra; *In re Beckett's Estate*, 169 Misc. 475, 8 N. Y. S. 2d 24, *infra*, p. 13, which necessarily involved the meaning of "jewelry" in a will.

[10] *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163.

rect claimed errors in lower court decisions,[11] nor merely to settle matters of private interest.[12]

II.

This case has no immediate importance beyond the particular parties and facts.

This case is not one of peculiar gravity and general importance which merits review by this Court. No constitutional or even statutory issue is presented, but merely a question of *local law* concerning the construction of certain provisions in an insurance policy. This Court expressly refused to decide such an issue in *Ruhlin* v. *New York Life Insurance Co.*, 304 U. S. 202 (1938). The construction and application of an incontestability clause of a life insurance policy was there involved, and a direct conflict among circuits had prompted this Court to grant certiorari shortly before the decision in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64. The Court, however, expressly declined to decide the issue of law involved, pointing out that under its *Erie* decision the issue was one of *state* law and that a decision could not reconcile the existing conflict between the circuits. We fail to appreciate the general importance of a decision by this Court on an issue of Missouri law which would not even bind the courts of Missouri,[13] let alone other state and federal courts.

The precise question presented in this case has never before arisen in any court, doubtless because no one has heretofore doubted that for purposes of insurance coverage precious stones are jewelry whether mounted in a

[11] Address of late Chief Justice Vinson before the American Bar Association, September 7, 1949, quoted in Stern and Gressman "Supreme Court Practice" (1950), page 98.

[12] *Forsyth* v. *Hammond*, 166 U. S. 506, 514.

[13] See *Scales* v. *National Life & Accident Ins. Co.* (Mo. *en Banc*), 212 S. W. 8, 10 (not officially reported).

setting or dismounted to be reset, renovated or for other reasons. This case, therefore, involves no general principles but merely circumstances that are unique and hardly likely to recur. This factor alone makes this case inappropriate for review by the discretionary certiorari process.[14]

Petitioners' contentions that the decision below undermines the national economy and threatens the security of holders of insurance policies universally seem too patently exaggerated to require refutation.

III.

The court below correctly held that the dismounted diamonds remained jewelry within the meaning of the policy in suit.

The decision of the Court of Appeals is clearly correct and turns entirely upon the facts of this case and the plain terms of the particular policy here involved. The word "jewelry" in ordinary usage has a plain and unambiguous connotation of precious stones which are cut and polished for use as ornaments, whether or not such precious stones are at the moment mounted in a setting. Moreover, the policy itself clearly contemplates that dismounted diamonds remain jewelry. Paragraph 6(e) provides in part that "this policy does not insure * * * against damage to property (watches, jewelry and furs excepted) occasioned by or actually resulting from any work thereon in the course of any refinishing, renovating or repairing process;" (R. 18, 23). Thus, if a jeweler had damaged gems dismounted from a scheduled item of jewelry in the course of renovating it, the damage would

[14] See opinions of Frankfurter, J., in *Carter* v. *Atlanta & St. Andrews Bay Ry. Co.*, 338 U. S. 430, 438; *United States* v. *Shannon*, 342 U. S. 288, 294-5.

unquestionably be damage to "jewelry." There is no necessity to resort to canons of construction to determine the meaning of this policy.

In Re Beckett's Estate, 169 Misc. 475, 8 N. Y. S. 2d 24, involved a bequest to petitioner of "the jewelry which belonged to his father." A diamond owned by his father had been mounted in a ring owned by his stepmother, the testatrix. The court held that petitioner was entitled to the diamond but not to the ring, thus holding necessarily that the diamond *as distinguished from* the ring in which it was mounted was "jewelry."

The term "jewelry" is defined in all standard dictionaries to mean "jewels" or "jewels collectively", and "jewel" is defined as a precious stone or gem, especially a stone cut and polished for use as an ornament (as those in question were), and also as a valuable or costly ornament often set with precious stones or jewels.[15] "In its usual and ordinary connotation 'jewel' refers to a precious stone, gem or ornament." *Jewel Tea Co.* v. *Kraus,* 187 F. 2d 278, 282 (7 Cir., 1951). To the same effect is *Wagner* v. *Congress Square Hotel Co.,* 115 Me. 190, 98 A. 660, 662. The Court of Appeals, therefore, quite properly held that

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[15]See definitions of "jewelry" and "jewel" in:
THORNDIKE-BARNHART HANDY POCKET DICTIONARY, Deluxe Edition, Garden City Books, Garden City, New York, publishers;
WEBSTER'S DAILY USE DICTIONARY, Grosset & Dunlap, publishers;
THORNDIKE CENTURY BEGINNING DICTIONARY, Scott Foresman and Company, publishers;
THORNDIKE-BARNHART JUNIOR DICTIONARY, Doubleday & Co., Inc., publishers;
WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE, Encyclopedic Edition, The World Publishing Company, Cleveland and New York, publishers, 1951;
WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, Second Edition Unabridged, G. & C. Merriam Company, Springfield, Mass., publishers, 1951;
WEBSTER'S NEW COLLEGIATE DICTIONARY, G & C Merriam Co., Springfield, publishers, 1953;
WEBSTER'S NEW PRACTICAL DICTIONARY, G & C Merriam Company, publishers, 1951;
WEBSTER'S ELEMENTARY DICTIONARY, A Dictionary for Boys and Girls, American Book Company, publishers.

the terms of the policy in question were unambiguous and that the term "jewelry" was used in the policy in its plain and ordinary sense to include both mounted jewels and dismounted jewels which were cut and polished for use as ornaments.

Conclusion.

The question presented was correctly decided by the Court of Appeals and the decision turns entirely upon the unique circumstances of this case. Neither a conflict with any other decision, federal or state, nor a question of substance or general importance is presented. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

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